Mohd Hafizuddin bin Mohd Khar v Ambank (M) Bhd (Tan Siew Hoon & Ors, third parties)

HIGH COURT (IPOH) — CIVIL APPEAL NO AA-12ANCC-1–01 OF 2024
MOSES SUSAYAN JC
24 FEBRUARY 2025

Civil Procedure — Action — Striking out — Striking out of action by trial court — Appellant filed action for negligence against respondent bank — Appellant filed claim under O 14A and O 33 rr 2 and 5 of Rules of Court 2012 — Sessions court struck out appellant's claim on grounds that respondent had transferred all rights and liabilities to another entity pursuant to vesting order — Respondent bank filed third-party proceedings — Sessions court struck out third-party proceedings — Whether respondent bank remained liable despite vesting order — Whether third-party proceedings were sustainable and could proceed independently — Whether sessions court's decision to strike out appellant's claim and third-party proceedings was correct

The present case concerned a dispute arising from a hire purchase vehicle gone wrong. The appellant, having purchased a car through hire purchase from the respondent bank, later discovered that the car was stolen. Alleging negligence, the appellant sued the respondent bank for failing to ensure the vehicle's genuineness before approving the financing. The respondent, however, contended that all rights and liabilities had been transferred to another entity known as Aiqon Amanah Sdn Bhd ('Aiqon Amanah') under a vesting order ('the vesting order'), absolving it of any responsibility. The sessions court struck out the appellant's claim under O 14A and O 33 rr 2 and 5 of the Rules of Court 2012 on the grounds that the vesting order had conclusively transferred all existing liabilities to Aiqon Amanah, as such, any claims should be directed to Aiqon Amanah rather than the respondent. Dissatisfied with the decision, the appellant filed the first appeal. In a separate action, the respondent had initiated third-party proceedings against various other entities involved in the verification process, arguing that they should bear liability. The entities in question were: (a) TP1 and TP2, the sellers of the vehicle; (b) PUSPAKOM Sdn Bhd ('TP3'), which issued the B5 Certificate; and (c) The Director of the Perak Road Transport Department ('TP4') who was responsible for maintaining vehicle registration records. However, the respondent's third-party notices were struck out by the sessions court, hence, the second appeal by the respondent. The issues to be determined in the present appeals were: (a) whether the appellant had a valid cause of action against the respondent in light of the vesting order; (b) whether the sessions court judge erred in striking out the appellant's claim under O 14A and/or O 33 rr 2 and 5 of the Rules of Court

2012; and (c) whether the third-party proceedings was sustainable and should continue despite the main claim being struck out.

Held, dismissing the first appeal by the appellant with costs of RM2,000 to the respondent and RM1,000 to each of the third-parties, and dismissing the second appeal by the respondent with no order as to costs:

(1) The appellant's argument that the cause of action accrued before the vesting order was without merit. While it was true that a cause of action accrued at the time of a contractual breach and that was, before the vesting order but the crucial issue was not the date of the breach but whether the correct party had been sued. In the present case, the entity legally to be named as a party in the proceeding was Aiqon Amanah because by reason of cl 3.13 of the vesting order, the one responsible for any contractual obligations at the time of the lawsuit was Aiqon Amanah, not the respondent (see paras 18–19).

(2) The court found that the sessions court had correctly determined that the appellant's claim against the respondent was unsustainable in law. The vesting order, being a legal instrument, effectively transferred all rights and liabilities to Aiqon Amanah. The respondent, therefore, no longer had any legal obligation toward the appellant at the time the suit was filed in 2019. If the appellant wished to pursue a claim, the proper party to be sued was Aiqon Amanah. Accordingly, the court upheld the sessions court's decision to strike out the claim under O 14A and O 33 rr 2 and 5 of the Rules of Court 2012 (see paras 21–22 & 28).

(3) Having dismissed the main action, the court found there was no purpose in maintaining the third-party action as there was no liability attached to the respondent that would justify seeking indemnity from the third-parties. As established in *Chang Chor Heong & Anor v Puncak Kencana Sdn Bhd (Lim Kim Kee & Anor, third party)* [2008] 8 MLJ 553 and *Inai Bina Sdn Bhd v Mohd Rizzal bin Shamat (t/a Kejuruteraan Perdana Teguh) (Bintang Kencana Sdn Bhd, third party)* [2015] 11 MLJ 360, a third-party claim based solely on indemnity could not stand when the primary claim against the respondent had been struck out. Therefore, the sessions court's decision to strike out the third-party proceeding was correct (see para 32).

[Bahasa Malaysia summary

Kes semasa melibatkan pertikaian yang timbul daripada transaksi sewa beli kenderaan yang tidak betul. Perayu, setelah membeli sebuah kereta melalui sewa beli daripada bank responden, kemudiannya mendapati kereta tersebut adalah kereta curi. Atas dakwaan berlakunya kecuaian, perayu menyaman bank responden kerana gagal memastikan ketulenan kenderaan tersebut sebelum meluluskan pembiayaan. Responden, bagaimanapun, menegaskan bahawa

semua hak dan liabiliti telah dipindahkan kepada entiti lain yang dikenali sebagai Aiqon Amanah Sdn Bhd ('Aiqon Amanah') di bawah perintah peletakhakan ('perintah peletakhakan tersebut') yang membebaskannya daripada apa-apa tanggungjawab. Mahkamah sesyen membatalkan tuntutan perayu di bawah A 14A dan A 33 kk 2 dan 5 Kaedah-Kaedah Mahkamah 2012 atas alasan bahawa perintah peletakhakan tersebut telah secara muktamad memindahkan semua liabiliti sedia ada kepada Aiqon Amanah, oleh itu, apa-apa tuntutan hendaklah ditujukan kepada Aiqon Amanah dan bukannya responden. Tidak berpuas hati dengan keputusan tersebut, perayu memfailkan rayuan pertama. Dalam tindakan berasingan, responden telah memulakan prosiding pihak ketiga terhadap beberapa entiti lain yang terlibat dalam proses pengesahan kereta tersebut, dengan alasan bahawa mereka juga harus menanggung liabiliti. Entiti-entiti yang dimaksudkan ialah: (a) TP1 dan TP2, penjual kenderaan tersebut; (b) PUSPAKOM Sdn Bhd ('TP3'), yang mengeluarkan Sijil B5; dan (c) Pengarah Jabatan Pengangkutan Jalan Perak ('TP4') yang bertanggungjawab menyelenggara rekod pendaftaran kenderaan. Bagaimanapun, notis pihak ketiga responden telah dibatalkan oleh mahkamah sesyen, oleh itu, rayuan kedua oleh responden. Isu-isu yang perlu diputuskan dalam rayuan-rayuan semasa adalah: (a) sama ada perayu mempunyai kausa tindakan yang sah terhadap responden berdasarkan perintah peletakhakan tersebut; (b) sama ada hakim mahkamah sesyen terkhilaf dalam membatalkan tuntutan perayu di bawah A 14A dan/atau A 33 kk 2 dan 5 Kaedah-Kaedah Mahkamah 2012; dan (c) sama ada prosiding pihak ketiga tersebut mampan dan harus diteruskan walaupun tuntutan utama telah dibatalkan.

Diputuskan, menolak rayuan pertama oleh perayu dengan kos RM2,000 kepada responden dan RM1,000 kepada setiap pihak ketiga, dan menolak rayuan kedua oleh responden tanpa perintah mengenai kos:

(1) Hujah perayu bahawa kausa tindakan terakru sebelum perintah peletakhakan tersebut adalah tidak bermerit. Walaupun benar bahawa kausa tindakan terakru pada masa pelanggaran kontrak iaitu sebelum perintah peletakhakan tersebut tetapi isu yang penting bukanlah tarikh pelanggaran tersebut tetapi sama ada pihak yang betul telah disaman. Dalam kes semasa, entiti yang secara sah perlu dinamakan sebagai pihak dalam prosiding ialah Aiqon Amanah kerana berdasarkan klausa 3.13 perintah peletakhakan tersebut, pihak yang bertanggungjawab ke atas apa-apa kewajipan kontrak pada masa tuntutan mahkamah tersebut ialah Aiqon Amanah, bukan responden (lihat perenggan 18–19).

(2) Mahkamah mendapati bahawa mahkamah sesyen telah memutuskan dengan betul bahawa tuntutan perayu terhadap responden adalah tidak mampan di sisi undang-undang. Perintah peletakhakan tersebut, sebagai instrumen undang-undang, mempunyai kesan memindahkan semua hak dan liabiliti kepada Aiqon Amanah. Responden, oleh itu, tidak lagi

A mempunyai apa-apa kewajipan undang-undang terhadap perayu pada masa saman tersebut difailkan pada 2019. Jika perayu ingin meneruskan tuntutan, pihak yang sewajarnya disaman ialah Aiqon Amanah. Sehubungan itu, mahkamah mengekalkan keputusan mahkamah sesyen untuk membatalkan tuntutan tersebut di bawah A 14A dan A 33 kk 2
B dan 5 Kaedah-Kaedah Mahkamah 2012 (lihat perenggan 21–22 & 28).

(3) Setelah menolak tindakan utama, mahkamah mendapati tiada tujuan untuk mengekalkan tindakan pihak ketiga tersebut kerana tiada liabiliti yang dikenakan kepada responden yang akan mewajarkannya untuk
C menuntut ganti rugi daripada pihak ketiga tersebut. Seperti yang ditetapkan dalam kes *Chang Chor Heong & Anor v Puncak Kencana Sdn Bhd (Lim Kim Kee & Anor, third party)* [2008] 8 MLJ 553, dan *Inai Bina Sdn Bhd v Mohd Rizzal bin Shamat (t/a Kejuruteraan Perdana Teguh) (Bintang Kencana Sdn Bhd, third party)* [2015] 11 MLJ 360, tuntutan
D pihak ketiga berdasarkan indemniti semata-mata tidak dapat bertahan apabila tuntutan utama terhadap responden telah dibatalkan. Oleh itu, keputusan mahkamah sesyen untuk membatalkan prosiding pihak ketiga tersebut adalah betul (lihat perenggan 32).]

E **Cases referred to**

Abdul Kashab Hj Hanafi v Hong Leong Bank Bhd [2016] 8 CLJ 487; [2016] 5 AMR 297, HC (refd)

Chang Chor Heong & Anor v Puncak Kencana Sdn Bhd (Lim Kim Kee, third party) [2008] 8 MLJ 553; [2009] 7 AMR 763; [2008] CLJU 384 ; [2008]
F 5 MLRH 769, HC (refd)

Inai Bina Sdn Bhd v Mohd Rizzal bin Shamat (t/a Kejuruteraan Perdana Teguh) (Bintang Kencana Sdn Bhd, third party) [2015] 11 MLJ 360, HC (refd)

KMNSPN Valliammai Achi (F) v A R S Nachiappa Chettiar [1957] 1 MLJ 27; [2000] 2 MLRH 513, CA (refd)

G *KPS-HCM Sdn Bhd v Shahrul Izewan Mat Husin & Ors* [2018] 11 MLJ 481; [2018] 6 CLJ 772; [2018] AMEJ 0246, HC (refd)

Loh Wai Lian v Sea Housing Corp Sdn Bhd [1984] 2 MLJ 280; [1984] 1 CLJ Rep 223; [1984] 1 MLRA 143; [1983] 1 MLRH 416, FC (refd)

Petroleum Nasional Bhd v Kerajaan Negeri Terengganu [2004] 1 MLJ 8; [2003]
H 4 CLJ 337, CA (refd)

RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd [2010] 2 MLJ 188; [2010] 1 CLJ 665; [2010] 2 AMR 590; [2009] 3 MLRA 162, FC (refd)

Stott v West Yorkshire Road Car Co Ltd [1971] 3 All ER 534, CA (refd)

I **Legislation referred to**

Banking and Financial Institutions Act 1989 (repealed by Financial Services Act 2013) s 50(3)

Financial Services Act 2013 s 104(2)

Rules of Court 2012 O 14A, O 16, O 16 r 6, O 33 rr 2, 5
Sale of Goods Act 1957 s 14(a)

Appeal from: Writ of Summons No AA-A52NCC-146–08 of 2019 (Sessions Court, Ipoh)

Muhammad Wafi bin Abdullah (with T Manoharan) (Krish Mano & Associates) for the appellant.
Shassidaren Deva Sana Pathy (with Jeyaramm Rajan) (Maxwell Kenion Cowdy) for the first respondent.
Siti Norashikin bt Hassanor (Senior Federal Counsel, Perak Legal Advisor Offices) for the second respondent.
Kenneth Koh (with Afiq Iskandar bin Aziz) (Xavier & Koh Partnership) for the fifth respondent.

Moses Susayan JC:

INTRODUCTION

[1] This case concerns a dispute arising from a hire purchase vehicle gone wrong. The appellant, having purchased a car through hire purchase from the respondent bank, later discovered that the car was stolen. Alleging negligence, he sued the respondent bank for failing to ensure the vehicle's genuineness before approving the financing. The respondent, however, contended that all rights and liabilities had been transferred to another entity under a vesting order, absolving it of any responsibility. Simultaneously, the respondent initiated third-party proceedings against various other entities involved in the verification process, arguing that they should bear liability.

[2] The two key issues for determination are whether the respondent remained liable despite the vesting order and whether the third-party claims were sustainable and could proceed independently.

BACKGROUND FACTS

[3] On 6 September 2013, the appellant, Mohd Hafizuddin bin Mohd Khar, entered into a hire purchase agreement with respondent, Ambank (M) Bhd to finance a Honda Civic S i-VTEC (A) 2.0i (registration number WUV 2939). Before finalising the agreement, the appellant had the vehicle inspected by PUSPAKOM, obtaining a B5 Certificate confirming its genuine condition. Relying on this certification, the respondent approved the hire purchase financing.

[4] However, on 28 December 2015, the vehicle was seized by the Road Transport Department on suspicion of tampered engine and chassis numbers.

A chemical report dated 8 January 2016 confirmed that the vehicle was stolen and linked to an earlier police report in 2013. Following this discovery, the appellant initiated a lawsuit against the respondent on 29 August 2019, alleging negligence for financing a stolen car without proper verification.

[5] In response, the respondent contended that all rights, liabilities, and obligations under the hire purchase agreement had been transferred to Aiqon Amanah Sdn Bhd ('Aiqon Amanah') via a sale and purchase agreement on 3 January 2019, followed by a vesting order dated 19 February 2019. Consequently, the respondent argued that it was no longer liable for the appellant's claim. The sessions court struck out the appellant's claim under O 14A and O 33 rr 2 and 5 of the Rules of Court 2012, leading to the first appeal (AA-12ANCC-1–01 of 2024).

[6] Separately, the respondent had initiated third-party proceedings against:

(a) Tan Siew Hoon and Ong Keng Hoe ('TP1' & 'TP2'), the sellers of the vehicle,

(b) PUSPAKOM Sdn Bhd ('TP3'), which issued the B5 Certificate, and

(c) the director of the Perak Road Transport Department ('TP4'), responsible for maintaining vehicle registration records.

[7] The respondent argued that these third parties played a role in verifying the vehicle's genuineness and should bear responsibility. However, the sessions court strike out the third-party notices. The respondent then filed the second appeal (AA-12ANCC-2–01 of 2024), contending that the dismissal was erroneous.

ISSUES FOR DETERMINATION

[8] The court is to determine the following issues:

(a) whether the appellant has a valid cause of action against the respondent in light of the vesting order;

(b) whether the sessions court judge erred in striking out the appellant's claim under O 14A and/or O 33 rr 2 and 5 of the Rules of Court 2012; and

(c) whether the third-party proceedings is sustainable and should continue despite the main claim being struck out

Issue 1: Whether the appellant has valid cause of action against the respondent

[9] The primary issue in this appeal is whether the appellant, has a valid cause of action against the respondent, in light of the vesting order dated 19 February 2019. The respondent asserts that all rights, liabilities, and obligations concerning the appellant's loan account were transferred to Aiqon Amanah through a sale and purchase agreement dated 3 January 2019 and a supplemental agreement dated 30 August 2019. Clause 8 and 8.6 in the sale and purchase agreement dated 3 January 2019 state, provides:

> 8. POST TRANSFER OBLIGATIONS 8.6 Post Completion.
>
> (a) After the Transfer Date, the Buyer shall manage the Debts on its own account. The Buyer shall at all times: -
>
> (i) ensure that it has adequate systems to manage the Debt;
>
> (ii) not do, cause to be done, omit to be done or cause to be omitted and shall cause its agents and successors in title accordingly not to do, cause to be done, omit to be done or cause to be omitted anything which could damage or which presents a risk of damage to the reputation, integrity and high standards of the Seller.
>
> ...
>
> (vii) *retain all rights, titles, interests and benefits of the Debts and shall not dispose, assign and/or transfer any rights, titles, interest and benefits of the Debts to any party*.
>
> (b) *The Buyer shall fully indemnify the Seller* from and against any damage, losses, liabilities, costs, claims, charges, expenses, actions ordemands which the Seller may incur or which may be made, claimed, or instituted against the Seller by any person as a result of or in connection with any breach by the Buyer of its obligations under Clause 8.6(a) above or any failure or omission by the Buyer to comply with Clause 8.6(a) above.

[10] The appellant, however, contends that the transfer of liability does not absolve the respondent of prior breaches and misrepresentations relating to the hire purchase agreement.

[11] The facts indicate after the hire purchase agreement with the respondent on 6 September 2013, the vehicle was confiscated by the Road Transport Department on 28 December 2015. The appellant subsequently initiated legal proceedings against the respondent in 2019, alleging negligence, misrepresentation, and breach of contract due to the respondent's failure to verify the genuineness of the vehicle before financing the transaction.

[12] The respondent on the other hand argues that the vesting order conclusively transferred all existing liabilities to Aiqon Amanah, rendering it the proper party to be sued. Under the vesting order, all legal proceedings and obligations related to the loan account were assigned to Aiqon Amanah. The following paragraphs from the vesting order dated 19 February 2019, confirm

A the assignment (append below the English translation):

> 2. that the VO Debts which constituted part of the Transferor's banking business, together with all prevailing rights, benefits and interests of the Transferor under the Associated Loan Documents shall be transferred to and vest in the Transferee with effect on and from the Transfer Date:
>
> B 3.2 any account and/or loan between the Transferor and its Debtors shall become an account and/or Loan between the Transferee and the Debtors, subject to the same conditions and incidents existed between the Transferor and its Debtors, and such account to be deemed for all purposes to be a single continuing account and/or single continuing Loan;
>
> C 3.11 In respect of any right or liability of the Transferor transferred to the Transferee pursuant to the Vesting Order, the Transferee shall have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or Loan Proceedings or making or resisting applications to any authority) for ascertaining, protecting or enforcing that right or resisting that
>
> D liability of the Transferor as if it had at all times been a right or liability of the Transferee, including those rights or liabilities in respect of any legal proceedings or Loan Proceedings or applications to any authority pending immediately before the Transfer Date by or against the Transferor;
>
> E 3.13 all Court Deposit as at the Transfer Date belongs to the Transferee;

[13] Thus, any claims arising from the hire purchase agreement should have been directed at Aiqon Amanah rather than the respondent. This position was upheld by the sessions court, on which grounds the learned session court judge
F struck out the appellant's claim under O 14A and/or O 33 rr 2 and 5 of the Rules of Court 2012.

[14] The appellant challenges that the respondent never informed him of the transfer of rights and obligations to Aiqon Amanah. The appellant argues that
G the cause of action against the respondent was already established when the vehicle was confiscated in 2015, long before the vesting order came into effect. The appellant relies on the principle that a cause of action accrues the moment a contractual breach or tortious act occurs, as established in *Loh Wai Lian v Sea Housing Corp Sdn Bhd* [1984] 2 MLJ 280; [1984] 1 CLJ Rep 223; [1984]
H 1 MLRA 143; [1983] 1 MLRH 416**.** In that case, the Federal Court held that a right to sue arises upon a breach of contract and that time runs from the date of the breach, not from the date of subsequent developments. Similarly, the appellant here argues that his claim against the respondent predates the vesting order and should not be invalidated by the subsequent transfer of obligations.

I

[15] The respondent, on the other hand, maintains that the sessions court had correctly dismissed the claim, citing the binding nature of the vesting order. The respondent further relies on the case of *Abdul Kashab Hj Hanafi v Hong Leong Bank Bhd* [2016] 8 CLJ 487; [2016] 5 AMR 297, where it

establishes that a vesting order is effective upon issuance, regardless of whether affected parties were notified. Under s 104(2) of the Financial Services Act 2013, similar to s 50(3) of the Banking and Financial Institutions Act 1989 ('the BAFIA'), vesting order have the effect of all rights, liabilities, and interests automatically transfer to the assignee. The respondent submits that, based on this principle, the appellant is bound by the 3 January 2019 sale and purchase agreement between the respondent and Aiqon Amanah. His Lordship Justice Mohd Nazlan Ghazali in *Abdul Kashab Hj Hanafi* states:

> Issue 4 - Vesting order not served on appellant
>
> [33] *The argument that the appellant did not get the notice of the vesting of the HP agreement and the hire purchase facility from EON Bank Bhd to Hong Leong Bank Bhd is similarly lacking in merit* in view of the clear language of s 50(3) of the former Banking and Financial Institutions Act 1989 which was in force at the time of the vesting of all assets and liabilities of the former to the latter, and which stipulated that such transfer to be effective on the transfer date referred to in the order of the High Court notwithstanding any law or rule of law. The vesting order is all encompassing (see *Phileo Allied Bank (M) Bhd v Koshish Credit & Leasing Sdn Bhd* [2002] 1 MLJ 245; [2001] 4 CLJ 788 and the Court of Appeal decision in *Leong Moh Sawmill Co Sdn Bhd v Standard Chartered Bank & Ors* [1996] 2 MLJ 614; [1997] 2 CLJ 131). The entirety of s 50(3) is reproduced below:
>
> (3) *Where the order of the High Court under sub-s (1) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from the transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law, and shall be binding on any person thereby affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings*.
>
> [34] As such the appellant's complaint about not having been informed about the vesting is of no relevance, for the law made it manifest that the vesting took effect nevertheless. For otherwise, financial institutions would have to enter into a novation in respect of each and every loans and business agreement. As stated in the section, the absence of notification to the customers too does not affect the effectiveness of the transfer, although obviously it would make practical sense if this was done. In fact, although not raised by the respondent, pursuant to s 50(4), the vesting order must be published in two daily newspapers; one in the national language and the other in English. Although BAFIA has been repealed, similarly worded vesting provisions are enacted in s 104(2) of the Financial Services Act 2013. In any event, in the instant case, the various statutory notices sent under the HP Act had clearly demonstrated Hong Leong Bank Bhd as the new owner of the car under the HP Act which would be deemed by BAFIA in light of the vesting order, to have been entered into by Hong Leong Bank Bhd from the time it was actually so executed by the original financier owner and the appellant. As such, this contention of the appellant too is devoid of merit. (Emphasis added.)

A **[16]** The respondent submits under the vesting order, Aiqon Amanah effectively stepped into its position as the creditor, meaning that any dispute regarding the hire purchase agreement should be pursued against Aiqon Amanah and not the respondent.

B **[17]** Further, the respondent contends that the appellant was fully aware of the vesting order, as the appellant did not object when the respondent applied to amend its statement of defence in May 2023 to plead vesting order as a defence. The amendment explicitly stated that all liabilities of the respondent had been assigned to Aiqon Amanah. The respondent argues that the C appellant's failure to challenge this assignment in a timely manner reinforces the conclusion that no valid cause of action remains against the respondent. Further, the respondent asserts that permitting the claim to proceed would render the vesting order meaningless and thereby go against the terms of a court D order.

[18] The appellant's argument that the cause of action accrued before the vesting order is without merit. While it is true that a cause of action accrues at the time of a contractual breach and that is, before the vesting order. The E crucial issue is not the date of the breach but whether the correct party has been sued. Pursuant to cl 3.13 of the vesting order, all legal, arbitration, tribunal, and other proceedings related to the vesting order debts that were pending immediately before the transfer date (22 February 2019) and in which the respondent was a party may continue as if Aiqon Amanah had been party F instead of the respondent. This means that after 22 February 2019, Aiqon Amanah assumes all legal responsibilities and liabilities of the respondent in ongoing proceedings, effectively substituting the Aiqon Amanah as the proper party in place of the respondent.

G **[19]** In this case, the entity legally to be named as a party in the proceeding is Aiqon Amanah because by reason of cl 3.13 the one responsible for any contractual obligations at the time of the lawsuit was Aiqon Amanah, not the respondent. Moreover, the appellant's failure to object to the amendment incorporating the vesting order further weakens his position.

H

[20] During the oral submissions by the parties at the hearing of the appeal before this court, I was moved by the fact that the appellant is an innocent victim of the circumstances and was constrained to order that the case be remitted to the sessions court, with a directive for the appellant to amend the I pleadings to include Aiqon Amanah as the respondent so as to enable the appellant to proceed with the action. The respondent objected to this and contended that the appellant had ample opportunity to take the necessary steps, including amending the pleadings, as they were aware of the vesting order as early as May 2023 or should have taken notice when it was advertised

in *Berita Harian* and *New Straits Times* sometime after 19 February 2019. In this regard, I refrain from intervening, as I am reminded of the words of Justice James Foong FCJ (as he then was) in *RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd* [2010] 2 MLJ 188; [2010] 1 CLJ 665; [2010] 2 AMR 590; [2009] 3 MLRA 162, where he emphasised that the court must not create a defence under the guise of justice. His exact words were:

> On this, we would like to add *that it is not the duty of the court to invent or create a cause of action or a defence under the guise of doing justice for the parties lest it be accused of being biased towards one against the other*. The parties should know best as to what they want and it is not for the court to pursue a cavalier approach to solving their dispute by inventing or creating cause or causes of action which were not pleaded in the first place. Such activism by the court must be discouraged otherwise the court would be accused of making laws rather than applying them to a given set of facts. (Emphasis added.)

[21] However, having reviewed the submissions from both parties, I find that the sessions court correctly determined that the appellant's claim against the respondent was unsustainable in law. The vesting order, being a legal instrument, effectively transferred all rights and liabilities to Aiqon Amanah. The respondent, therefore, no longer had any legal obligation toward the appellant at the time the suit was filed in 2019. If the appellant wished to pursue a claim, the proper party to be sued was Aiqon Amanah.

[22] Accordingly, this court upholds the sessions court's decision to strike out the claim under O 14A and O 33 rr 2 and 5 of the Rules of Court 2012.

Issue 2: Whether sessions court judge erred in striking out the claim pursuant to O 14A and/or O 33 rr 2 and 5 of the Rules of Court 2012

[23] The sessions court did not err in striking out the appellant's claim under O 14A and O 33 rr 2 and 5 of the Rules of Court 2012. The court correctly exercised its discretion by determining that the matter could be disposed of without a full trial based on undisputed documentary evidence, particularly the vesting order dated 19 February 2019 and the sale and purchase agreements between the respondent and Aiqon Amanah.

[24] Pursuant to O 14A of the Rules of Court 2012, the court is empowered to determine pure questions of law without necessitating a full trial, provided the legal issue is clear and decisive. In *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8; [2003] 4 CLJ 337, the Court of Appeal emphasised the importance of addressing threshold legal issues at an early stage to prevent unnecessary litigation, minimise costs, and avoid prolonged proceedings. At para 19, p 22, Justice Mohd Noor Ahmad JCA aptly stated:

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> ... Therefore, the determination of the threshold issue as preliminary issues will be decisive of the whole litigation or essentially the main part of the suit. Thus, resulting in a substantial saving of time and cost as it will significantly cut down the costs and time involved in pre-trial preparation or in connection with the trial proper.

B

[25] In the present case, the existence of the vesting order was undisputed, and it conclusively transferred all rights, interests, and liabilities from the respondent to Aiqon Amanah. Given this, the sessions court correctly determined that there was no reasonable cause of action against the
C respondent, thereby justifying the decision to strike out the claim without proceeding to trial.

[26] Similarly, O 33 rr 2 and 5 of the Rules of Court 2012 empowers the
D court to resolve preliminary legal issues before trial if such issues would be decisive to the dispute. The vesting order was a key legal instrument that effectively removed the liability from the respondent, making Aiqon Amanah the rightful party to be sued.

E **[27]** Further, the Court of Appeal in *Abdul Kashab Hj Hanafi* ruled that a vesting order takes effect regardless of whether the affected party was notified, and the transfer is valid and binding.

[28] In light of what was stated above, this court finds that the sessions
F court's ruling was correct and in accordance with established principles of procedural efficiency. The decision to strike out the claim was justified as the respondent was no longer the proper party to be sued, and any claim should have been directed against Aiqon Amanah. Therefore, the appeal is dismissed, and the sessions court's decision is upheld.

G

Issue 3: The second appeal (AA-12ANCC-2–01 of 2024) filed by the respondent, (Ambank (M) Bhd), against the same sessions court decision regarding its order to cancel third-party notice

H **[29]** The key issue in this appeal is whether the third-party proceedings against TP1, TP2, TP3, and TP4 should continue after the main action has been struck out. Specifically, the court must determine whether such proceedings can stand independently of the main claim. Third-party proceedings are independent claims initiated by the respondent against third
I parties, primarily for indemnity. The fundamental purpose of O 16 of the Rules of Court 2012 is to consolidate related disputes and prevent a multiplicity of actions. Courts have emphasised the separate nature of third-party proceedings in cases such as *KMNSPN Valliammai Achi (F) v A R S Nachiappa Chettiar* [1957] 1 MLJ 27; [2000] 2 MLRH 513 (CA) *and*

KPS-HCM Sdn Bhd v Shahrul Izewan Mat Husin & Ors [2018] 11 MLJ 481; [2018] 6 CLJ 772; [2018] AMEJ 0246, where it was held that such proceedings are distinct from the main action between the appellant and the respondent.

[30] The striking out of the main action does not automatically extinguish third-party proceedings. In *Stott v West Yorkshire Road Car Co Ltd* [1971] 3 All ER 534, the court ruled that third-party claims may continue even if the dispute between the appellant and the respondent has been settled. However, third-party proceedings may be struck out where they no longer serve a practical purpose. The High Court in *Chang Chor Heong & Anor v Puncak Kencana Sdn Bhd (Lim Kim Kee, third party)* [2008] 8 MLJ 553; [2009] 7 AMR 763; [2008] CLJU 384 ; [2008] 5 MLRH 769 (refd), held that a third-party claim cannot stand where the respondent's liability towards the appellant has not been established. Similarly, in *Inai Bina Sdn Bhd v Mohd Rizzal bin Shamat (t/a Kejuruteraan Perdana Teguh) (Bintang Kencana Sdn Bhd, third party)* [2015] 11 MLJ 360; [2015] CLJU 674; [2015] AMEJ 755; [2017] MLRHU 362, the court demonstrated that a third-party claim might be struck out if it lacks a reasonable cause of action. Under O 16 r 6 of the Rules of Court 2012, the court has the discretion to set aside third-party proceedings at any stage.

[31] In the present case, the respondent seeks indemnity from all third-parties (TP1, TP2, TP3 & TP4) for any liability, costs, and damages payable to the appellant, alleging breach of warranties, negligence, and failure to maintain accurate records. TP1 and TP2, as used car dealers, assured the respondent that the vehicle was legally sellable and free from defects. The respondent relied on these assurances when purchasing the vehicle and entering into a hire-purchase agreement with the appellant. If the appellant's claim is upheld, TP1 & TP2 would be liable for breach of warranty under s 14(a) of the Sale of Goods Act 1957 (Akta 382), and the respondent seeks indemnity for any costs or damages awarded to the appellant. TP3 (Puspakom Sdn Bhd) is claimed to have failed to conduct proper vehicle inspections or reported incorrect vehicle conditions, as it issued an inspection certificate on 27 August 2013, which the respondent relied upon before entering the hire-purchase agreement. If the appellant's claim is successful, the respondent seeks indemnity for any liability arising from TP3's negligence. TP4 (JPJ Perak) is responsible for maintaining accurate vehicle registration records. If the appellant's claim is upheld, it implies TP4 failed to update vehicle records, affecting the vehicle's hire-purchase eligibility, and the respondent seeks indemnity for damages caused by inaccurate records. Append below the claims by the respondent against the respective third party:

Tan Siew Hoon dan Ong Keng Hoe

(Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua)

1. Pihak Ketiga Pertama dan Pihak Ketiga yang Kedua, kedua-duanya merupakan rakan kongsi bagi suatu penjual kenderaan terpakai di bawah nama dan gaya Teong Seng Enterprise.

2. Plaintif telah memeriksa satu kereta Honda Civic S i-VTEC (A) 2.0i (Facelift) yang bernombor plat WUV 2939 (selepas ini dikenali sebagai 'kereta tersebut') di premis Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua.

3. Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua telah memberikan satu akujanji bahawa:

   i. Mereka adalah pihak yang diberi kuasa dan mempunyai hak di sisi undang-undang untuk menjual kereta tersebut; dan

   ii. kereta tersebut tidak mempunyai sebarang kecacatan dan tidak pernah diusik pada pembinaan, struktur, nombor chasis, nombor enjin atau mana-mana nombor pengenalan lain.

4. Defendan telah membeli kereta tersebut daripada Pihak Ketiga Pertama dan Pihak Ketiga yang Kedua berdasarkan akujanji yang diplidkan diatas dan memasuki perjanjian sewa beli yang bertarikh 6.9.2013 dengan Plainitf bersandarkan kepada akujanji Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua.

5. Dan dalam apa cara sekalipun akujanji tersebut adalah terma tersirat penjualan kenderaan tersebut dari Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua kepada Defendan menurut seksyen 14(a) Akta 382.

6. Sekiranya tuntutan Plaintif dibenarkan terhadap Defendan disini maka la bermakna akujanji serta terma jualan yang diberikan oleh Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua telah dimungkiri dibawah seksyen 14(a) Akta 382.

7. *Sekiranya Defendan disini adalah bertanggungan kepada Plaintif, maka Defendan berhak ditanggung rugi oleh Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua secara bersesama dan berasingan* dengan Pihak Ketiga yang Ketiga terhadap tuntutan Plaintif tersebut beserta kos yang harus dibayar oleh Defendan termasuk kos membela tuntutan Plaintif di dalam ini dan kos notis ini beserta faedah berhak.
   Puspakom Sdn Bhd (Pihak Ketiga yang Ketiga)

8. Pihak Ketiga yang Ketiga merupakan pihak yang telah meluluskan pemeriksaan dan mengeluarkan sijil pemeriksaan tukarmilikyang bertarikh 27.8.2013 yang mana Defendan sandarkan kepadanya sebelum Perjanjian Sewa Beli yang bertarikh 6.9.2013 dimasuki diantaranya dengan Plaintif.
   Sekiranya tuntutan Plaintif terhadap Defendan dibenarkan maka ia bermakna Pihak Ketiga yang Ketiga telah cuai, lalai dan/atau gagal dalam melaksanakan pemeriksaan sewajarnya ke atas kereta tersebut dan/atau melaporkan keadaan yang sebenarnya.
   Sekiranya Defendan disini adalah bertanggungan kepada Plaintif, maka Defendan berhak ditanggung rugi oleh Pihak Ketiga yang Ketiga secara

bersesama dan berasingan dengan Pihak Ketiga yang Pertama, Pihak Ketiga yang Kedua dan Pihak Ketiga yang Ketiga terhadap tuntutan Plaintif tersebut beserta kos yang harus dibayar oleh Defendan termasuk kos membela tuntutan Plaintif di dalam ini dan kos notis ini beserta faedah berhak.

Pengarah Jabatan Pengangkutan Jalan Negeri Perak (Pihak Ketiga yang Keempat)

1. Pihak Ketiga Yang Keempat selaku pihak yang menyimpan dan mengekalkan sistem pendaftaran kenderaan bermotor.

2. 2 Sekiranya tuntutan Plaintif terhadap Defendan dibenarkan maka ia bermakna Pihak Ketiga Yang Keempat telah gagal dalam menyimpan dan menyenggara sistem pendaftaran kenderaan bermotor yang tepat dan boleh dipercayai.

3. Oleh itu, Pihak Ketiga Yang Keempat telah gagal untuk mengemaskini sistem maklumat untuk mencerminkan status kesesuaian kenderaan tersebut untuk antara lain disewa

4. Ini juga bermakna, Pihak Ketiga Yang Keempat telah cuai, lalai dan/atau gagal dalam mengemaskini pendaftaran dan maklumat sistem dengan maklumat yang terbaharu termasuk kegagalan untuk mengemaskini sistem maklumat diantaranya dari pihak Polis Diraja Malaysia

5. *Sekiranya Defendan disini adalah bertanggungan kepada Plaintif, maka Defendan berhak ditanggung rugi oleh Pihak Ketiga Yang Keempat secara bersesama dan berasingan dengan Pihak Ketiga yang Pertama, Pihak Ketiga yang Kedua dan Pihak Ketiga yang Ketiga terhadap tuntutan Plaintif tersebut beserta kos* yang harus dibayar oleh Defendan termasuk kos membela tuntutan Plaintif di dalam ini dan kos notis ini beserta faedah berhak. (Emphasis added.)

[32] Having dismissed the main action, the court finds there is no purpose in maintaining the third-party action as there is no liability attached to the respondent that would justify seeking indemnity from the third-parties. As established in *Chang Chor Heong* and *Inai Bina*, a third-party claim based solely on indemnity cannot stand when the primary claim against the respondent has been struck out. The sessions court's decision to strike out the third-party proceeding is correct. Therefore, second appeal is accordingly dismissed, as it no longer serves any legal purpose. However, the sessions court's costs order in favour of the respondent remains intact.

CONCLUSION

[33] Based on the foregoing, the appellant's appeal in the first appeal is dismissed against the respondent as it is unsustainable in law. The vesting order effectively transferred all rights and liabilities to Aiqon Amanah, making any claim against the respondent improper. Accordingly, I also dismiss the second appeal as I find there is no purpose in maintaining the third-party action as

A there is no liability attached to the respondent for there to be an indemnity against the third parties.

[34] In respect of the first appeal (AA-12ANCC-1–01 of 2024), encl 1 is dismissed, with costs of RM2,000 awarded to the respondent and
B RM1,000 awarded separately to each of the third-parties. In respect of the second appeal (AA-12ANCC-2–01 of 2024), encl 1 is dismissed without any order as to costs.

C *First appeal by appellant dismissed with costs of RM2,000 to respondent and RM1,000 to each of third-parties; second appeal by respondent dismissed with no order as to costs.*

Reported by Dzulqarnain Ab Fatar

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